IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5032 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINCHANDRA M PATEL

Versus

VASUDEV MURLIDASJI

Appearance:

1. Special Civil Application No. 5032 of 1989

MR NK MAJMUDAR for Petitioner No. 1

MR CC TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 04/10/2002

ORAL JUDGEMENT

The present petition is preferred against the judgment and order dated 20.1.1989 passed by the Gujarat

State Revenue Tribunal in Revision Application No.417/85 whereby the revision is allowed and the order of the Asst.Collector is set aside.

2. The short facts of the case are that the petitioner was claiming right as tenant of the agricultural land. Applications were made by the petitioner for declaring him as tenant. Initially, there were earlier proceedings and the matters were remanded and thereafter ultimately on 22.8.84 the Mamalatdar and the ALT passed order whereby it was found by the Mamalatdar that the petitioner has failed to establish that he was the tenant of the agricultural land and in the order of the Mamalatdar it has been recorded that the joint landlords, namely, Desaibhai Parshottambhai Patel, Shanabhai Laxmidas Patel, Gordhanbhai Dhulabhai, Ashabhai Nagjibhai, Motibhai Keshubahi and Mansangbhai Lallubhai who have been examined have declared that the land is cultivated by self-cultivation by the respondent and the petitioner has not cultivated the land at any point of time. It was also recorded by the Mamalatdar that the notice is not proved nor the agreement (patta) is also proved.

3. The matter was carried before the Asst.Collector.However, the Ld.Asst.Collector by his order dated 13.2.1985 allowed the appeal by accepting the evidence of notice and of patta and by discarding the oral evidence of the witnesses. The matter was carried before the Gujarat State Revenue Tribunal in revision and the tribunal after examining the record found that the finding of the Asst.Collector is not supported by the evidence on record in as much as since no person was examined as the author of the notice and since agreement (patta) is not signed and no witnesses are examined for the said purpose. Both the documents on the basis of which reliance is placed are wrongly taken as proved by the Asst.Collector and therefore the tribunal found that since there is no evidence produced on record regarding relationship of tenancy the order of the Asst.Collector deserves to be quashed and set aside and the order of the Mamalatdar deserves to be confirmed and hence this petition.

4. At the outset, the learned counsel appearing for the petitioner fairly submitted that it is true that this court while exercising power under Article 227 of the Constitution can not reappreciate the evidence, but the contention raised on behalf of the petitioner was that such limitation for exercising power is also applicable to the tribunal exercising revisional jurisdiction.

Mr.Majmudar submitted that when the Asst.Collector found upon the record that the relationship of tenancy is established the tribunal could not have upset the finding by reappreciation of evidence. Reliance is placed by Mr.Majmudar upon the judgment of the Apex Court in the matter of Kanhu vs Pushpavati reported in (1998) 7 SCC 325 for contending that the tribunal can not reexamine pure questions of facts while exercising revisional jurisdiction.

5. On behalf of respondents, Mr.Patel appearing for Mr.Trivedi has supported the order passed by the tribunal.

6. Having considered the above submissions and more particularly the decision upon which the reliance is placed I am of the view that on the contrary it has been observed that the tribunal can examine the moot question whether the person concerned has established his case of oral tenancy vis-a-vis rightful owner of the land. In the present case, same exercise is undertaken by the tribunal and the tribunal has found that the document upon which reliance placed is not proved and no witnesses are also examined, and therefore, the tribunal found that the relationship of tenancy vis-a-vis rightful owner is not established. Further, in the aforesaid decision, the Apex Court has, on the contrary, observed that if the tribunal has rightly exercised the revisional power, the decision of the High Court in not interfering with the decision of the tribunal is proper. In my view, the perusal of the order passed by the tribunal clearly shows that the tribunal has upon the material on record arrived at the finding that the documents are not proved and therefore the relationship of tenancy is also not proved and hence the tribunal has rightly allowed the revision by setting aside the order of the Asst.Collector and by confirming the order of the Mamalatdar.

7. It is well settled that this court while exercising powers under Article 227 of the Constitution would not interfere with the fact finding unless such finding is perverse to the record. In the present case, the petitioner has not been able to show that the finding of the tribunal is perverse to the record. The only contention raised on behalf of the petitioner is that the tribunal ought not to have reappreciated the evidence. As a matter of fact, there was no question of reappreciation of evidence, but if the document itself is not proved which goes to the root of the matter and when the tribunal finds that there is no evidence on record to prove the relationship of tenancy the interference by the

tribunal with the order of the Asst.Collector is legal and valid and therefore considering the judgment of the tribunal I find that no interference is called for exercising powers under Article 227 of the Constiution.

8. In the above view of the matter, I find that there is no substance in the petition. Hence, petition is dismissed. Rule is discharged. Interim relief is vacated. There shall be no order as to costs.

4.10.02 (JAYANT PATEL,J)